

REMARKS

The following issues are outstanding in the pending claims:

- Claims 1-26 are rejected under 35 USC 112;
- Claim 1 is rejected under 35 USC 102;
- Claims 1-4 are rejected under 35 USC 103;
- Claims 5-7 are rejected under 35 USC 103;
- Claims 8-11 are rejected under 35 USC 103;
- Claims 12-13 are rejected under 35 USC 103; and
- Claims 14-26 are rejected under 35 USC 103.

Claim Amendments

Certain claims have been amended in order to more clearly define the subject matter of the present invention. Claim 12 has been amended to independent form and now recites a packaged treat-sized pet food product comprising a manufactured food substrate and a combination of non-palatable, functional additives incorporated in the food substrate, including from 6 to 14 % vegetable charcoal, from 0.3 to 0.8 % salts of zinc and from 0.05 to 0.11 % of Yucca Shidigera or Elata extract. The functional additives are present in amounts sufficient to reduce flatulence odour when the pet food product is provided to a pet animal on a regular daily basis. Claim 13 has been amended to further define elements in claim 12. Claim 25 has been amended to include the elements of claim 12. New claims 27 and 28 have been added and claims 1-11 have been cancelled. No new matter has been added as a result of the amendments.

35 USC 112

Claims 1-26 have been rejected under 35 USC 112, second paragraph, as being indefinite for failing to distinctly claim the subject matter of the present invention. Claims 1-

11 have been cancelled. Regarding the term “treat-size”, Applicant respectfully submits that the ultimate physical dimension of a pet product that is a “treat” will vary according to the breed and size of an animal. However, a person skilled in the art in the manufacture of pet food products will understand that the term “treat-sized” is to be contrasted with a full-meal canned (semi-wet or wet) pet food product, a full-meal product comprised of a plurality of kibbles, or pouches containing full-meal semi-wet or wet pet food products. See the attached selected pages from the book titled “Canine-Feline Nutrition” published by Mosby, Inc. that illustrates the distinction between the different types of pet food. Claim 12 makes clear that the functional additives are incorporated into the food substrate. Applicant respectfully submits that the rejections under 35 USC 112 have been overcome.

35 USC 102

Claim 1 has been rejected under 35 USC 102(e) as having subject matter anticipated by U.S. Pat. No. 6,391,375 to Fone. Since claim 1 has been cancelled, this rejection is now moot.

35 USC 103

Claims 1-4 have been rejected under 35 USC 103(a) as having subject matter unpatentable over Fone and WO 98/44932 to Sunvold in view of U.S. Pat. No. 4,046,922 to Burkwall Jr.; WO 97/29763 to Marino and Abood (N. American Veterinary Conference Proceedings, Vol. 12, 5/1999). Since claims 1-4 have been cancelled, this rejection is now moot.

35 USC 103

Claims 5-7 have been rejected under 35 USC 103(a) as having subject matter unpatentable over Fone and WO 98/44932 to Sunvold in view of U.S. Pat. No. 6,156,355 to Shields, Jr. et al. Since claims 5-7 have been cancelled, this rejection is now moot.

35 USC 103

Claims 8-11 have been rejected under 35 USC 103(a) as having subject matter unpatentable over Fone and WO 98/44932 to Sunvold in view of U.S. Pat. No. 6,156,355 to Shields, Jr. et al.; U.S. Pat. No. 6,228,418 to Gluck et al; U.S. Pat. No. 6,165,474 to Frudakis

et al.; and U.S. Pat. No. 5,786,382 to Childers-Zadah. Since claims 8-11 have been cancelled, this rejection is now moot.

35 USC 103

Claims 12-13 have been rejected under 35 USC 103(a) as having subject matter unpatentable over Fone and WO 98/44932 to Sunvold in view of the admitted prior art in the specification at page 4, lines 17-25; U.S. Pat. No. 5,405,836 to Richar et al. and further in view of U.S. Pat. No. 6,156,355 to Shields, Jr. et al. Applicant respectfully traverses this rejection.

Fone discloses pet food products containing a functional additive (chicory) in an amount to maintain good faeces quality in a pet and/or maintain good gastrointestinal tract health or improves the gastrointestinal health of a pet. The pet food can be a packaged pet food snack.

Sunvold is directed to a process for feeding an animal a diet that alters the function of the gastrointestinal tract by feeding the animal a pet food containing fermentable fibers present in amounts from about 1 to 11 weight percent of supplemental dietary fiber.

Richar et al. teaches that coating dry pet food kibbles with specified amounts of water soluble zinc compounds can be used to control malodorous breath in pets. Most of the discussion in Richar is directed to the use of zinc compounds as breath control agents.

Shields discloses breed-specific dog food formulations that comprise chicken meat as the major ingredient and rice as the grain source. Among the other ingredients in the formulations is Yucca Shidigera to impart a “unique aroma and taste” (Col. 6, lines 56-59) and to help manage joint inflammation (Col. 8, lines 42-47).

Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention when there is some teaching, suggestion or motivation to do so found in either the references themselves or in the knowledge generally available to one of ordinary skill in the art. *In re Fine*, 837 F.2d 1071, 5 USPQ 2d 1586 (Fed. Cir. 1988); *In re Jones*, 958 F.2d 347, 21 USPQ 2d 1941 (Fed. Cir. 1992). Applicant

respectfully submits that there is nothing in the combination of these references that produces a packaged treat-sized pet food product comprising a manufactured food substrate and a combination of non-palatable, functional additives incorporated in the food substrate, including from 6 to 14 % vegetable charcoal, from 0.3 to 0.8 % salts of zinc and from 0.05 to 0.11 % of Yucca Shidigera or Elata extract in which the functional additives are present in amounts sufficient to reduce flatulence odour when the pet food product is provided to a pet animal on a regular daily basis. Fone is silent regarding functional additives in an amount sufficient to reduce flatulence ordour and a food substrate formulated to mask the flavours and/or ordour of non-palatable functional additive. Sunvold does not teach a food substrate into which is incorporated at least two functional additives of unpalatable nature which are intended to reduce flatulence ordour when ingested by a pet animal.

Richar is silent on the use of zinc salts to reduce flatulence ordour and Applicant submits that breath malodour control and flatulence ordour reduction require consideration of different physiological and chemical processes that take place in the oral cavity as compared to those in the intestinal track of a pet animal. Furthermore, knowledge of zinc salt's breath malodour control properties does not make it obvious to one skilled in the art that such substances may be tried out or used by themselves, let along in combination with other functional additives as proposed by the present invention, in seeking to address flatulence ordour problems. Shield's use of extracts of Yucca Shidigera, as discussed above, are included for different health reasons. Having acknowledged that three individual functional additives are individually known for their properties, it by no means follows nor is it obvious to a person skilled in the art to simply combine three additives and incorporate the same into a pet food product in the expectation that at least two of these functional additives show a synergistic effect beyond a mere additive outcome. Given that the three ingredients are separately known to address the same purpose, there is no reason to combine two or three of the active ingredients, given the suitability of each of the functional additives to perform its own function. Additionally, given the substantive number of compounds that are known to the person of skill in the art which might be used in relation to a specific health condition, e.g. breath freshening properties, bad ordour of faeces, etc., the selection of two or more active ingredients that achieve a synergistic effect must, by definition, be considered non-obvious. Because the references relied upon teach that all aspects of the claimed invention

were individually known in the art is not sufficient to establish a *prima facie* case of obviousness without some objective reason to combine the teaching of the references. *Ex parte Levengood*, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1992); *In re Kotzab*, 217 F.3d 1365, 1371, 55 USPQ2d 1313, 1318 (Fed. Cir. 2000). If an independent claim is non-obvious under 35 U.S.C. 103, than any claim depending therefrom is by definition non-obvious. Applicant respectfully submits that claim 13 depends at least in part from independent amended claim 12. Accordingly, Applicant respectfully submits reconsideration and withdrawal of the outstanding rejection of claims 12-13 under 35 U.S.C. 103(a) as having subject matter unpatentable over Fone and WO 98/44932 to Sunvold in view of the admitted prior art in the specification at page 4, lines 17-25; U.S. Pat. No. 5,405,836 to Richar et al. and further in view of U.S. Pat. No. 6,156,355 to Shields, Jr. et al.

35 USC 103

Claims 14-26 been rejected under 35 USC 103(a) as having subject matter unpatentable over Fone and WO 98/44932 to Sunvold in view of U.S. Pat. No. 4,046,922 to Burkwall Jr.; WO 97/29763 to Marino and Abood (N. American Veterinary Conference Proceedings, Vol. 12, 5/1999) and further in view of Shields et al., U.S. Pat. No. 6,379,725 to Wang et al.; U.S. Pat. No. 5,439,924 to Miller and U.S. Pat. No. 4,451,488 to Cook et al. Applicant respectfully traverses this rejection.

Applicant respectfully submits that the previous discussion of the patentability of the subject invention over Fone and Sunvold obviates the present rejection. The Burkwall, Marino, Abood, Shields et al., Wang et al., Miller and Cook et al. references add no new teaching to Fone and Sunvold that would result in the inventive pet food product of amended independent claim 12. Claims 14-24 depend at least in part on claim 12. Amended independent claim 25 includes the limitations of claim 12 and claim 26 depends from claim 25. If an independent claim is non-obvious under 35 U.S.C. 103(a), than any claim depending therefrom is by definition non-obvious. *In re Fine*, 5 USPQ 2d 2596 (Fed. Cir. 1988). Accordingly, Applicant respectfully submits reconsideration and withdrawal of the outstanding rejection of claims 14-26 under 35 U.S.C. 103(a) as having subject matter unpatentable over Fone and WO 98/44932 to Sunvold in view of U.S. Pat. No. 4,046,922 to Burkwall Jr.; WO 97/29763 to Marino and Abood (N. American Veterinary Conference

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Proceedings, Vol. 12, 5/1999) and further in view of Shields et al., U.S. Pat. No. 6,379,725 to Wang et al.; U.S. Pat. No. 5,439,924 to Miller and U.S. Pat. No. 4,451,488 to Cook et al.

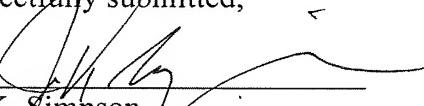
CONCLUSION

In view of the above amendment, applicant believes the pending application is in condition for allowance.

The fee for a two month extension of time is being submitted with this response. Applicant believes no fee is due with this response. If additional fees are due, please charge our Deposit Account No. 06-2375, under Order No. HO-P02403US0 from which the undersigned is authorized to draw.

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Respectfully submitted,

By 

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